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Supreme Court of the United States

OCTOBER TERM, ~~1929—No. 581.~~ 1930 - No 32

ANNA URAVIC, as Administratrix of the goods, chattels and credits which were of ANTON URAVIC, deceased,

Petitioner,

against

F. JARKA COMPANY, INC. and UNITED AMERICAN LINES, INC.,

Respondents.

MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*, ON BEHALF OF THE CUNARD STEAM SHIP COMPANY, LTD., AND BRIEF OF *AMICUS CURIAE*

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MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*

MAY IT PLEASE THE COURT:

The undersigned, as counsel for The Cunard Steam Ship Company, Ltd., respectfully moves this Honorable Court for leave to file the accompanying brief in this case as *amicus curiae.*

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Counsel for The Cunard Steam Ship Company, Ltd., as Amicus Curiae,
25 Broadway,
New York City.

Supreme Court of the United States

OCTOBER TERM, 1929—No. 581.

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F. JARKA COMPANY, INC. and UNITED AMERICAN LINES, INC.,

Respondents.

BRIEF OF *AMICUS CURIAE* ON BEHALF OF THE CUNARD STEAM SHIP COMPANY, LTD.

I.

Preliminary Statement.

The question involved in this proceeding, as to whether Section 33 of the Merchant Marine Act of 1920 applies to longshoremen injured in the course of their employment while working on foreign vessels, is similar to the question involved in three cases pending against The Cunard Steam Ship Company, Ltd., a foreign corporation. In each of such cases, the plaintiff, a longshoreman employed by the foreign steamship company, sued to recover damages for injuries received while working on a foreign vessel at the Port of New York. In two of such cases, *Harrington* v. *The Cunard Steam Ship Company, Ltd.* and *Buckley* v. *The Cunard Steam Ship Company, Ltd.*, which

were tried in the New York Supreme Court, the evidence showed that the injuries resulted from the negligence of fellow-servants, and, over the contentions of the plaintiffs that the cases were governed by Section 33, the complaints were dismissed. The third case, *O'Reilly* v. *The Cunard Steam Ship Company, Ltd.*, was tried before Judge Boxdy and a jury in the United States District Court for the Southern District of New York. It was submitted to the jury under a common law charge, the Court expressly declining to charge that the defendant would be liable for the negligence of fellow-servants under Section 33. The motion to set aside the verdict in favor of the defendant on the ground that the Court should have submitted the question of the negligence of fellow-servants as a ground of liability was denied. In each case an appeal is pending and undetermined.

The only distinction between the cases mentioned and the instant case is that in the former the longshoremen were directly employed by the foreign steamship company and in the latter the longshoreman was employed by an independent stevedore under a contract with the owners. The decision of this Court in the instant case will affect the liability of the defendant in the cases mentioned.

The position of *amicus curiae* is that Section 33 of the Merchant Marine Act does not apply to longshoremen injured while working on foreign vessels, whether they are employed directly by the owner of the vessel or by an independent stevedore.

It is not intended in this brief to rehearse the arguments already presented in the able opinion of the New York Court of Appeals in the case of *Resigno* v. *F. Jarka Co., Inc.*, 248 N. Y. 225, and in the brief for the respondent Jarka herein. The purpose of this brief is rather to pre-

sent additional arguments apparently not elsewhere considered.

II.

ARGUMENT.

Section 33 of the Merchant Marine Act does not apply to an action brought by a longshoreman to recover for injuries received while working on a foreign vessel.

The New York Court of Appeals based its decision in the instant case (reported at 252 N. Y. 530) upon its previous decision in the case of *Resigno* v. *Jarka, supra.* In the latter case the Court was unanimous in holding that Section 33 did not apply to members of the crews of foreign vessels, Judge CARDOZO saying at page 233:

> "The court is unanimous in its holding that seamen in the strict or proper sense are without the purview of the act when working upon foreign vessels. Whatever division there is among us has its origin in a supposed distinction between the remedy available to such seamen and that available to stevedores" (longshoremen).

Judge CRANE, although he held that Section 33 applied to a longshoreman employed by a stevedore on a foreign vessel, after referring to the provisions of other sections of the Act which make specific reference to foreign vessels, said at page 238:

> "Section 33 makes no such application, and it is natural to assume, therefore, that Congress did not intend to extend its provisions to foreign ships. The

> object of the act was to provide for the promotion and maintenance of the American Merchant Marine (*Panama R. R. Co.* v. *Johnson*, 264 U. S. 375, p. 389), and I fail to see how the American Merchant Marine would be benefited by applying the act to the crews of foreign ships."

If Section 33 was intended to apply to foreign seamen, it was intended to apply to all of them. It is provided in the last sentence of the section that jurisdiction in such actions shall be under the court of the district "*in which the defendant employer resides or in which his principal office is located.*" It is common knowledge that foreign tramp steamers whose owners have neither residences nor offices in this country and whose business is transacted through ship's agents here, constantly come to American ports. The Act provides no remedy *in rem* against these vessels. *The Pinar Del Rio* (C. C. A. 2nd Cir.), 16 F. (2nd) 984. And if Congress had intended to apply the remedy to foreign seamen, it would have granted a remedy *in rem* where the owner did not reside or have an office in this country. Any other consideration results in the conclusion that Congress, by the venue provisions of the section, intended to exclude from the benefits of the Act that large class of seamen employed on foreign vessels whose owners do not reside or have offices here.

This Court, in *International Stevedoring Co.* v. *Haverty*, 272 U. S. 50, decided that longshoremen are seamen within the meaning of the word as it is used in Section 33. In arriving at this conclusion, this Court, speaking through Mr. Justice Holmes, said at page 52:

> "It is true that for most purposes, as the word is commonly used, stevedores are not 'seamen'. But

> words are flexible. The work upon which the plaintiff was engaged was a maritime service formerly rendered by the ship's crew. *Atlantic Transport Co.* v. *Imbrovek*, 234 U. S. 52, 62. We cannot believe that Congress willingly would have allowed the protection to men engaged upon the same maritime duties to vary with the accident of their being employed by a stevedore rather than by the ship."

Longshoremen, then, are brought within the Statute because they are employed in maritime service *on ships*. Employment *by the vessel* is rejected as the test of the applicability of the statute, and employment *on the vessel* is substituted. The rule here announced makes the rights of the crew the criterion of the rights of the longshoremen.

If the protection afforded to seamen by this statute was not intended to "*vary with the accident of their being employed by a stevedore rather than by the ship*", and if the members of the crew of a foreign vessel are not within the statute, the statute could not have been intended to apply to longshoremen employed *on foreign vessels*, although employed *by American stevedores*. If the question "By whom was this seaman employed?" does not determine the applicability of the section, then the question "On what vessel was he employed?" must be controlling. It is not consistent to hold longshoremen to be so identified with the crew of a vessel as to be seamen within the Act and at the same time to hold that they are not so identified with the crew (if the vessel happens to be foreign) as to be without the Act. Any other construction would result in the existence of two classes of seamen on a foreign vessel in an American port: (1) the vessel's regular crew, the members of which are foreign seamen, and (2) the longshoremen temporarily engaged thereon, who are American seamen.

If our reasoning is correct, it would seem, therefore, that the Act cannot apply to longshoremen on foreign vessels unless it also applies to seamen on foreign vessels.

Section 33 was enacted as part of a statute providing "for the promotion and maintenance of the American Merchant Marine". Since we must consider this law as applying to longshoremen, it would seem to be more in consonance with the express purpose of the Act to hold that it applies only to longshoremen working on American vessels. This would induce longshoremen to seek such employment and would carry out the intent of the statute by making such employment one to be preferred by the longshoremen.

Mr. Justice O'Malley, writing for the Appellate Division of the New York Supreme Court in *Resigno* v. *Jarka Co., Inc.*, 221 App. Div. 214, said at page 219:

> "As already appears, the end sought to be achieved by the Jones Act was the promotion of an American merchant marine. To that end certain inducements were offered to shipowners and operators to take out American registry. It was just as important to induce seamen to work on vessels so registered for this purpose. Seamen so employed were also granted certain privileges. All other things being equal, a seaman would naturally prefer to be employed aboard an American vessel where in case of death compensation could be had. To hold, therefore, that Section 33 of the Jones Act does not apply to foreign seamen is not to subvert the plainly avowed purpose of the legislation, but is to carry out its evident general scheme."

We refer below to a number of cases wherein it has been held that the general words of a statute would be lim-

ited to the purposes of the Act as expressed in the title and other parts thereof.

In *Brown* v. *Duchesne*, 19 How. 183, the question arose whether a patent granted to a patentee under the laws of the United States for an improvement on the gaff of a vessel applied to a French vessel coming into the ports of the United States. The Court said at page 194:

> "The general words used in the clause of the patent laws granting the exclusive right to the patentee to use the improvement, taken by themselves, and literally construed, without regard to the object in view, would seem to sanction the claim of the plaintiff. But this mode of expounding a statute has never been adopted by any enlightened tribunal—because it is evident that in many cases it would defeat the object which the Legislature intended to accomplish. And it is well settled that, in interpreting a statute, the court will not look merely to a particular clause in which general words may be used, but will take in connection with it the whole statute (or statutes on the same subject) and the objects and policy of the law, as indicated by its various provisions, and give to it such a construction as will carry into execution the will of the Legislature, as thus ascertained, according to its true intent and meaning."

In *Petition of Canadian Pacific Railway Co.*, 278 Fed. 180, the question was whether the term "no vessel of 100 gross tons or more", found in Section 13 of the Seamen's Act of March 4, 1915, applied to foreign vessels. The Court held that it did not and said at page 196:

> "The expression 'no vessel of 100 tons or more' is broad and comprehensive, and must be held to have relation only to the subject legislated upon, and be

> limited to the general context as expressed in the title of the act."

In *The Elswick Tower,* 241 Fed. 706, the question arose whether the words "the master of every vessel", contained in Section 4511 of the Revised Statutes, applied to the master of a foreign vessel. The Court held that it did not so apply and at page 710 quoted the language of Chief Justice MARSHALL in *United States* v. *Fisher,* 2 Cranch 358, 386, to the effect that

> "Where the mind labors to discover the design of the Legislature, it seizes everything from which aid can be derived; and in such case the title claims a degree of notice, and will have its due share of consideration."

In *Grant* v. *United States,* 58 Fed. 694, the question was whether Section 4601 of the Revised Statutes providing that "if any person shall harbor or secrete any seaman or mariner belonging to any ship or vessel" he should become subject to a penalty, applied to seamen on foreign vessels. The Court held that the section did not apply to them.

In *United States* v. *Kellum,* 7 Fed. 843, the action was for a violation of Section 4609 of the Revised Statutes providing that "if any person shall demand or receive, either directly or indirectly, from any seaman, or other person seeking employment as a seaman" any remuneration other than the fees authorized by the Act for providing him with employment, he should become subject to a penalty. The Court held that the Act did not apply to a case where remuneration is exacted for providing a seaman with employment in a foreign ship.

III.

CONCLUSION.

It is respectfully submitted that Section 33 of the Merchant Marine Act does not apply to actions brought by longshoremen injured on foreign vessels whether in the direct employ of the vessel or of a contracting stevedore.

Dated, New York, November 21, 1930.

Respectfully submitted,

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CPY6775

SUPREME COURT OF THE UNITED STATES.

No. 32.—October Term, 1930.

Anna Uravic, Administratrix of Anton Uravic, Petitioner, *vs.* F. Jarka Company and United American Line, Inc.	On Writ of Certiorari to the Supreme Court of the State of New York.

[January 5, 1931.]

Mr. Justice Holmes delivered the opinion of the Court.

This is an action that was brought in a Court of the State of New York and tried before a jury. At the close of the plaintiff's case the complaint was dismissed upon the merits and the decision was affirmed by the Court of Appeals, 252 N. Y. 530, on the authority of *Resigno* v. *F. Jarka Co.* [248 N. Y. 225]. A writ of certiorari was granted by this Court, 281 U. S. 708, because there is involved an important question as to the applicability of the Jones Act of 1915, c. 153, as amended by the Act of June 5, 1920, c. 250, § 33, 41 Stat. 988, 1007; U. S. Code, Title 46, § 688.

The action was for causing the death of the plaintiff's intestate, Anton Uravic, an American citizen, employed in work as a stevedore by the F. Jarka Company, a Delaware corporation. The suit against the other defendant named was discontinued. At the time of receiving the injury that caused his death, July 13, 1926, Uravic was helping to unload a vessel flying the German flag, in the harbor of New York. He was on the vessel at the time and we are to take it that he was hurt by the negligence of a fellow servant. That fact was no defence if the above-mentioned § 33 governed, because it is not one in the case of railway employees; Act of April 22, 1908, c. 149, § 1, 35 Stat. 65; U. S. Code, Tit. 45, § 51; and this § 33 giving an action at common law to the personal representative of any seaman suffering death in the course of his employment makes applicable all statutes of the

United States conferring or regulating such right of action in the case of railway employees. It is decided that stevedores come within the benefits conferred by § 33. *International Stevedoring Co.* v. *Haverty*, 272 U. S. 50. But the question is raised whether the statute applies to a stevedore working on a vessel that we assume to have been German, since she flew the German flag.

The language of the statute is general. The right is given to 'any seaman,' including, as we have said, stevedores. The jurisdiction and the authority of Congress to deal with the matter are unquestionable and unquestioned. *Cunard Steamship Co.* v. *Mellon*, 262 U. S. 100, 124, *et seq.* The conduct regulated is of universal concern. The rights of a citizen within the territorial limits of the country are more extensively determined by the scope of actions for torts than even by the law of crimes. There is strong reason for giving the same protection to the person of those who work in our harbors when they are working upon a German ship that they would receive when working upon an American ship in the next dock, as is especially obvious in the case of stevedores who may be employed in unloading vessels of half a dozen different flags in turn.

But it is said that stevedores only get their rights by a somewhat artificial extension of the word 'seaman' and it is argued that a seaman upon a German vessel clearly would not be given the rights claimed. It is said that the word is defined by R. S. § 4612, U. S. Code, Tit. 46, § 713. But that section merely provides that for the purposes of the chapter 'seaman' shall include persons who otherwise might be deemed not to be seamen. It is directed to extension not to restriction, as remarked by Judge Crane in *Resigno* v. *F. Jarka Co.*, 248 N. Y. 225, 242. Then it is argued that the grant of jurisdiction to the Court of the District in which the defendant employer resides or has his principal office without granting a proceeding *in rem* in the case of tramp steamers from abroad shows that seamen on a foreign vessel were not contemplated. But the question is not whether they were thought of for the purpose of inclusion but whether they were intentionally excluded from a description that on its face includes them. The express mention of them in sections as to the payment of wages does not help the respondent since that is a domestic matter of contract that unless mentioned might be left to the parties concerned. See *Jackson* v. *S.S. Archimedes*, 275 U. S. 463, 467.

Perhaps it would be a sufficient answer to the objections that while the § 33 is construed to give the rights of seamen to stevedores it does not say or mean that stevedores are to be regarded as seamen on the particular vessel upon which for the moment they happen to be at work. They simply are given the rights of seamen and as they are American workmen they have the rights of American seamen as well on German as on American ships.

But we may go further. Here we are dealing with the conduct of persons within the jurisdiction affecting the safety of other persons within it. If the rule is wise there is no reason why it should not be universal. Wise or not it is law and the question is why general words should not be generally applied. What would be the alternative? Hardly that the German law should be adopted. It always is the law of the United States that governs within the jurisdiction of the United States, even when for some special occasion this country adopts a foreign law as its own. *The Exchange,* 7 Cranch, 115, 136. *The Lottawanna,* 21 Wall. 558, 571, 572. *The Western Maid,* 257 U. S. 419, 432. *Cunard S.S. Co.* v. *Mellon,* 262 U. S. 100, 124. There hardly seems to be a reason why it should adopt a different rule for people subject to its authority because they are upon a private vessel registered abroad. They are not within the exception as to public armed vessels of a foreign sovereign, whatever its extent. *The Exchange,* 7 Cranch, 116, 143. Crimes committed upon such private vessels may be punished by the territorial jurisdiction. *Wilderhus' Case,* 120 U. S. 1. *Patterson* v. *Bark Eudora,* 190 U. S. 169, 177. We see no reason for limiting the liability for torts committed there when they go beyond the scope of discipline and private matters that do not interest the territorial power. But in these latter cases the local authority might abstain from interfering simply because it did not care to interfere. It would be extraordinary to apply German law to Americans momentarily on board of a private German ship in New York.

At the argument it was suggested that the case should be governed by the general maritime law. This means, as we have indicated, by the law of the United States, with the provisions of § 33 left out. It is assumed that by the law so qualified a master would not be liable to a servant for an injury caused by the negli-

gence of a fellow servant. But that doctrine is of relatively recent appearance in admiralty following the common law. *The City of Alexandria,* 17 Fed. Rep. 390. And, as we believe, it was introduced into the common law almost within the memory of men still living upon a principle of policy. Labatt, Master & Servant, §§ 471, *et seq.*, § 484; 2d Ed. §§ 1394, 1408. It would be somewhat hard to maintain that principle as still the policy of the law in this case after the doctrine has been abolished for railroad employees and seamen. See *International Stevedoring Co.* v. *Haverty,* 272 U. S. 50, 52.

If it should appear that by valid contract or special circumstances seamen on a foreign ship should not be protected by the statute it will be time enough to consider the exception when it is presented. But the purport of the words is plain and there is no reason to deny stevedores the benefit of them even if exceptions to the rule for seamen may be found upon peculiar facts.

Judgment reversed.

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Test:

Clerk, Supreme Court, U. S.